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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

REFERRABILITY OF VARIOUS ACTIONS REGARDING THE CONVENTION CENTER
EXPANSION

Pursuant to the direction and request of the City Council, T. William Opdyke, Esq. of the Los Angeles office of Sheppard, Mullin, Richter & Hampton was retained to analyze whether certain actions concerning the Convention Center Expansion project (the "Project"), to be considered by the City Council on March 17, 1997, are referrable (subject to a referendum). The actions analyzed by Mr. Opdyke are as follows:

1. A resolution (No. R-97-915) authorizing the City Manager to enter into an agreement for routine inspection consultant services in connection with the previously approved Project.
2. A resolution (No. R-97-917) authorizing the City Manager to enter into a further interim agreement to make final preparations for the start of actual construction pursuant to the previously approved Project.
3. A resolution (No. R-97-918) authorizing the City Manager to execute supplemental agreements concerning the previously approved Project, for increased expenditures due to the delay engendered by litigation over the Project.
4. A resolution (No. R-97-919) authorizing the City Auditor and Comptroller to pay a certain amount to the contractor for reimbursable costs, pursuant to the previously approved design and construction contract for the Project.
5. A resolution (No. R-97-834) authorizing the City Manager to enter into an agreement for certain bond counsel services in connection with the previously approved Project and issuance of lease revenue bonds.

Enclosed as Attachment 1 is a summary of Mr. Opdyke's conclusions, and enclosed as Attachment 2 is his legal analysis. In sum, Mr. Opdyke is of the opinion that a California Court should conclude that the indicated resolutions are not referable or subject to a referendum.

In addition to the actions analyzed by Mr. Opdyke, the Council will be considering an ordinance (No. O-97-82) amending the Annual Appropriations Ordinance (No. O-18328) by increasing the Capital Improvements Program budget for the Project. In our opinion, this action, too, is not referable, pursuant to the plain language of San Diego City Charter sections 16¹ and 23² which together provide that the Annual Appropriation Ordinance, and amendments thereto, are not subject to a referendum.

Respectfully submitted,

CASEY GWINN
City Attorney

LJG:ljb(043.1)
Attachments
cc: City Manager
City Auditor
RC-97-5

¹In relevant part, Section 16 provides: "[T]he annual appropriation ordinance . . . may be passed by the Council on the day of [its] introduction."

²In relevant part, Section 23 provides: "[T]he powers of the . . . referendum are hereby reserved to the people of the City. . . . [R]eferendum may be exercised on any ordinance passed by the Council except an ordinance which by the provisions of this Charter takes effect immediately upon its passage"